Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2022-002191
DC/00026/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 September 2022	**On 21 October 2022**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE HOLLY STOUT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS JOSETTE WILLIAMS

Respondent

Representation:
For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr A Steadman, instructed under Direct Access

DECISION AND REASONS

Introduction

1. This is an appeal by the Secretary of State for the Home Department against the decision of First-Tier Tribunal Judge R E Barrowclough (the FtTJ) promulgated on 9 March 2022, following a hearing at Taylor House on 15 February 2022, allowing Miss Josette Williams' appeal against the Secretary of State's decision to deprive her of citizenship, pursuant to s 40A of the British Nationality Act 1981 (the 1981 Act). Although the Secretary of State is the appellant to this appeal and Miss Williams the respondent, we will refer in this decision to the Secretary of State as the respondent and Miss Williams as the appellant, as they were before the FtTJ.

2. Permission to appeal was granted by First-tier Tribunal Judge O'Brien on 29 April 2022. Judge O'Brien indicated that the FtTJ had arguably erred in law in the light of Begum [2021] UKSC 7 and Laci [2021] EWCA Civ 769 in considering for himself how the discretion to deprive the appellant of British citizenship should have been exercised, rather than approaching the decision on a *Wednesbury* basis, but did not limit the grant of permission; permission was granted on all grounds.

Background

3. The background is set out in the decision of the FtTJ, and the Secretary of State's decision letter, but may be summarised as follows for the purposes of the issues we have to decide:-

4. The appellant was born on 2 March 1973 in Kingston, Jamaica. She has five children, born in 1993, 1998, 2000, 2002, and 2006. She met the father of the children, then known as Grattan Samuels, in 1990 in Jamaica. On 14 October 1998 the appellant entered the United Kingdom on a visitor's visa with her first child. Her second child was born shortly after. Grattan Samuels joined her in the United Kingdom in 1999 and in August 2001 they married. At that point, the appellant had been granted leave to remain as a student. Prior to their marriage, Grattan Samuels told the appellant that he would change his identity to Carl Roden, dob 4 December 1974, nationality British. In 2001 the appellant applied for, and was subsequently granted, leave to remain as the spouse of a settled person in the United Kingdom (i.e. the application relied on her husband's new identity as Carl Roden). In October 2003, the appellant successfully applied on the same basis for indefinite leave to remain. On 10 May 2005 the appellant applied (with two of her children) for naturalisation as a British citizen, again on the basis of her husband's Carl Roden identity, and this application was also granted.

5. In 2006, the appellant divorced Mr Samuels/Roden because she had discovered he was having an affair with another woman with whom he had two children.

6. Sometime in 2010 immigration officers in the company of Mr Samuels/Roden turned up at the appellant's home. The appellant's case before the FtTJ was that it was only at this point that the appellant learned that Mr Samuels/Roden had obtained British nationality fraudulently. She said that her literacy skills were poor and she had relied on Mr Samuels/Roden to make the applications.

7. In January 2011 the appellant was convicted and sentenced to 6 months imprisonment (suspended) after pleading guilty to three counts of seeking/obtaining leave to remain by deception, contrary to section 24A(1)(a) of the Immigration Act 1971 (the 1971 Act). (We observe that the third count related to the May 2005 application for British Nationality, which is not an application for leave to remain, but neither party to this appeal submits that anything turns on this; we agree, since the remaining convictions may clearly be traced to applications for leave to remain based on the Samuels/Roden deception.) The appellant's evidence to the FtTJ was that she only pleaded guilty because her solicitor advised her that a guilty plea would mean she would avoid going to prison.

8. In 2012 Mr Samuels/Roden returned to Jamaica and the appellant did not speak to him again until 2021.

9. In 2013, the appellant received a letter from the Passport Office, telling her to come and collect her own and her children's passports. The following year, the appellant renewed her own and her children's passports and they were able to travel abroad in 2014.

10. On 26 August 2020 the Home Office wrote to the appellant stating that the Secretary of State *"has reason to believe that [she] obtained [her] status as a British citizen as a result of fraud"* and that the respondent was accordingly considering depriving her of citizenship under s 40(3) of the 1981 Act. There was no explanation in the letter as to why the Secretary of State had waited nearly 10 years following the appellant's conviction before considering depriving her of citizenship. The appellant made representations in response to that letter in which, among other things, she asserted that at the time of making the applications that had formed the basis of her convictions, she had relied on what her husband had told her as being 'the truth'.

11. By letter of 4 March 2021 (reissued in complete form on 7 May 2021) the respondent notified the appellant that a decision had been taken to deprive her of British nationality under s 40(3) of the 1981 Act. The respondent rejected the appellant's case and concluded that she had knowingly and deliberately made applications on a fraudulent basis, knowing Carl Roden not to be a British national. The respondent further concluded that it was appropriate to exercise her discretion to deprive the appellant of citizenship, and that it was proportionate to do so having regard to the appellant's rights under Article 8 of the European Convention on Human Rights (ECHR). The respondent also took into account the need to safeguard and promote the welfare of children in the United Kingdom in accordance with s 55 of the Borders, Citizenship and Immigration Act 2009.

12. The appellant suffers from a number of medical conditions and is currently in receipt of welfare benefits in the United Kingdom as her health conditions prevent her from working.

The FtTJ's decision

13. The FtTJ heard oral evidence from the appellant and oral submissions from both parties. He also received a written skeleton argument on behalf of the appellant, and written witness statements from the appellant, the appellant's children and a number of other people on her behalf. The FtTJ accepted the appellant to be a credible witness and accepted her case on the facts ([35]).

14. The FtTJ identified the law he had to apply as follows at [15]:-

> The appeal lies under s.40A of the British Nationality Act 1981. Section 40 of that Act gives the respondent the power to deprive an individual of citizenship, if she is satisfied that it is conducive to the public good (s.40(2)); and also where she is satisfied that an individual's registration or naturalisation was obtained by means of (a) fraud, (b) false representation, or (c) concealment of a material fact (s.40(3)). The burden of proof where, as here, it is proposed to remove already established rights is on the respondent; the standard of proof required is a balance of probabilities. In human rights appeals, it is for the appellant to show that there has been an interference with her human rights. If that is established, and the relevant Article permits, it is then for the respondent to establish that the interference was justified. The

> appropriate standard of proof is "whether there are substantial grounds for believing the evidence".

15. To this self-direction, the FtTJ added at [31] reference to Laci v SSHD [2021] EWCA Civ 769, [27] where the Court of Appeal (Underhill LJ giving the judgment of the court) quoted from [6] of KV (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 2483 what Underhill LJ identified as *"the principles applicable in an appeal under section 40A"* as follows:-

> "The task of the tribunal on such an appeal has been considered by the Upper Tribunal (Immigration and Asylum Chamber) in a number of cases including Deliallisi v Secretary of State for the Home Department [2013] UKUT 439 (IAC) and, more recently, BA v Secretary of State for the Home Department [2018] Imm AR 807. I would endorse the following principles which are articulated in those decisions and which I did not understand to be in dispute on this appeal:
>
> (1) Like an appeal under section 82 of the Nationality, Immigration and Asylum Act 2002, an appeal under section 40A of the 1981 Act is not a review of the Secretary of State's decision but a full reconsideration of the decision whether to deprive the appellant of British citizenship.
>
> (2) It is thus for the tribunal to find the relevant facts on the basis of the evidence adduced to the tribunal, whether or not that evidence was before the Secretary of State when deciding to make a deprivation order.
>
> (3) The tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection.
>
> (4) If the condition precedent is established, the tribunal has then to ask whether the Secretary of State's discretion to deprive the appellant of British citizenship should be exercised differently. For this purpose, the tribunal must first determine the reasonably foreseeable consequences of deprivation.
>
> (5) If the rights of the appellant or any other relevant person under article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms are engaged, the tribunal will have to decide whether depriving the appellant of British citizenship would constitute a disproportionate interference with those rights. But even if article 8 is not engaged, the tribunal must still consider whether the discretion should be exercised differently."

16. The FtTJ at [32] went on to state that he would adopt the approach of the Court of Appeal in Laci and quoted from [46] of Underhill LJ's judgment, which paragraph provides as follows:

> 46 It will be noted that the judge conducted his analysis entirely by reference to the appellant's article 8 rights. It follows from what I have said above that the appeal primarily involves the exercise of a common law discretion, even where article 8 may be engaged; but, as I have also observed, the essential questions may not be very different whether the issue is addressed as one of proportionality or as the

> exercise of a common law discretion. In either case a balance was required between the obvious strong public interest in depriving the appellant of a benefit that he should never have received and the countervailing factors on which he relied.

17. The FtTJ identified at [30] the key paragraph of the respondent's policy on deprivation of citizenship to be paragraph 55.7.7.1 which provides as follows:-

> The caseworker should be satisfied that there was an intention to deceive: an innocent error or genuine omission should not lead to deprivation. However, a deliberate abuse of immigration or nationality application processes … may lead to deprivation.

18. The FtTJ noted (at [30]) that: *"the appellant's lack of literacy and her dependence on help and assistance from others in completing forms and documents, including her citizenship application, was plainly significant and an important extenuating feature"*.

19. The FtTJ observed (at [31]) that the respondent's delay of over 9 years between the appellant's conviction and serving the notice of intention, and the respondent's reissuing of the appellant's passport in 2014 without demur, were also *"highly relevant"*.

20. At [33] the FtTJ noted that the precondition for the making of a deprivation order was satisfied, stating: *"There is no doubt that the appellant's British citizenship was obtained by fraud and/or false representation"*. He went on to identify the *"determinative issue"* as being *"whether depriving the appellant of British citizenship would constitute a disproportionate interference with her Article 8 rights",* but added *"and even if Article 8 is not engaged, the Tribunal should still consider whether the discretion should be exercised differently"*.

21. The FtTJ went on at [34] to assess *"the weight to be ascribed to the public interest in maintaining the integrity of the application for British citizenship system"*, acknowledging that the appeal was concerned only with deprivation of citizenship and not with the separate question that may then arise of the appellant's removal from the country. He concluded that the Claimant's *"admission of criminality"* through her guilty pleas and the sentence she received for that meant that this public interest was *"heavily engaged"*.

22. At [35]-[36], the FtTJ set against the public interest in maintaining the integrity of the application for British citizenship system the appellant's uncontested evidence, which he accepted, of her poor literacy and numeracy skills, and her reliance on what Mr Samuels/Roden had told her about his change of name and application for British citizenship, the truth of which she learned about from immigration officers only years later after their marriage had come to an end. The FtTJ agreed with the submission made on behalf of the appellant that *"support for the limited extent of the appellant's culpability in the fraud can be inferred from the apparent leniency of the sentences imposed at the Crown Court"*. The FtTJ described these as *"significant mitigating circumstances".* He placed weight on the fact that the appellant had lived in the United Kingdom for 23 years, has strong family life in the country, including as the sole carer for her 13-year-old daughter, and has not been involved in any wrongdoing in this country, other than that initiated by her husband. In line with Laci, he also placed significant weight on the respondent's delay in taking action to deprive the appellant of citizenship, noting that no explanation for the delay had been

proffered by the respondent, and that, further, the respondent's delay went beyond mere inaction as the respondent had renewed the appellant's passport (and those of her children) for 10 years from 2014, which (following EB (Kosovo) [2009] AC 1159) he considered reduced the weight to be given to the maintenance of the immigration system.

23. At [37] he concluded:

> Whether the issue is addressed as one of proportionality under Article 8 or as the exercise of a common law discretion (and I appreciate that, as was confirmed by Lord Justice Leggatt in KV(Sri Lanka v SSHD [2018] EWCA Civ 2483, this appeal hearing is a full reconsideration of the decision to deprive the appellant of British citizenship, rather than a review of the respondent's decision), I have come to the conclusion that the respondent's unexplained and unreasonable delay in seeking to deprive the appellant of her citizenship, together with the other matters set out in paragraphs 35 and 36 above, amount to 'something more' as envisaged in Hysaj, and that the balancing exercise between the public interest in depriving the appellant of a benefit she should not have received and the countervailing factors on which she relies falls in her favour. In reaching that conclusion, I bear in mind in particular the appellant's limited culpability and the extenuating circumstances (as I have found) in the criminal deception orchestrated by her former husband, and the respondent's positive action in thereafter issuing the appellant with a new passport, thereby enabling the appellant's life to return to some form of normality, as she says, following her earlier conviction. For her future to then be thrown into doubt once more, without warning, some six or seven years later, strikes me as being unjust, particularly with the inevitable uncertainty as to whether the respondent would then seek the appellant's removal or deportation, and would be bound to be deeply upsetting for both the appellant and her children, especially her daughter who is still a minor, as well as potentially aggravating the appellant's medical and mental health conditions. I conclude that the respondent's discretion to deprive the appellant of British citizenship should have been exercised differently, that no such decision should have been taken by her, and that deprivation of the appellant's citizenship amounts to a disproportionate interference with the appellant's right to family life in breach of Article 8 ECHR, and would violate the UK's obligations under the Human Rights Act 1998. For these reasons, I allow the appellant's appeal under both s.40A of the 1981 Act and Article 8 of the ECHR.

The parties' submissions

24. Mr Clarke for the Secretary of State relied on the grounds of appeal. As to ground 1, he submitted that the FtTJ's approach to the issue of criminality was erroneous. He argued that the appellant's case before the FtTJ was that she was not aware of criminality until 2010, but on that basis she was not guilty of dishonesty offences. However, she pleaded guilty to dishonesty offences, so it was perverse for the judge then to accept the appellant's account that she knew nothing about it at the material time at [35]. Likewise at [37], the FtTJ had wrongly taken into account the appellant's 'limited culpability'.

25. As to ground 2, Mr Clarke submitted that the FtTJ had misdirected himself by failing to take a *Wednesbury* approach to reviewing the exercise of discretion by

the Secretary of State, as R (Begum) v SIAC [2021] UKSC 7 and Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 00238 (IAC) make clear is required. By looking into the culpability of the offending, the judge is impermissibly re-making the discretion, and taking account of the appellant's oral evidence, none of which was before the Secretary of State. So far as the Article 8 assessment was concerned, [26] of Ciceri makes clear that just because there has been a delay does not mean citizenship should not be revoked.

26. Mr Steadman for the appellant submitted that the FtTJ did not 'go behind' the guilty plea or the fact that the appellant's offences were dishonesty offences. However, he properly considered the appellant's mitigation and degree of culpability. The judge gave due weight to those mitigating circumstances. The judge then moves onto the issue of delay and there is nothing to suggest that the judge gives the delay anything other than appropriate weight. There is nothing perverse in that assessment and Ground 1 should be dismissed.

27. As to Ground 2, Mr Steadman submitted that the respondent is not arguing that both Article 8 and common law discretion should be considered separately, the complaint is that the judge stepped into the role of the decision-maker. However, that was in line with the judgment of the court in Laci and the Upper Tribunal in Ciceri. Under Article 8, it is for the judge to make his own decision. At [38] and [46] of Laci, the Court of Appeal suggests that there is little difference between the analysis under Article 8 or a common law exercise of discretion. Mr Steadman submits that in this case the judge undertook a balanced Article 8 analysis, relying on the appellant's length of time in the UK, the Home Office's delay, and her minimal culpability. Mr Steadman submitted that the Respondent had not challenged the judge's Article 8 assessment.

28. In reply, Mr Clarke submitted that Laci was focused on Article 8; hence Begum did not 'bite' on it (see [46]). Mr Clarke accepted, however, that his Ground 2 cannot survive without Ground 1 as although the judge has taken the wrong approach if he was concerned only with the exercise of a common law discretion, in fact Article 8 was engaged in this case and it was for the FtTJ to assess that for himself. Mr Clarke explained that the Secretary of State does challenge the Article 8 decision by reference to the perverse conclusion in relation to the effect of the appellant's guilty plea. As to delay, he submitted that the policy guidance at Chapter 55 makes it clear that a person who has committed fraud in the application is indefinitely liable to deprivation of citizenship. Agyarko makes clear that the UK has a margin of appreciation and the Secretary of State's policy needs to be taken into account, and that includes that a person is indefinitely liable to deprivation in the event of fraud. Mr Clarke accepted, however, that there was no other explanation given by the Secretary of State for the delay.

29. As to whether, if we find an error of law, we should remit or remake, both parties agreed that we should remit.

Conclusions

30. We take Ground 2 first. The most authoritative recent statement of the law concerning appeals under section 40A of the 1981 Act, subsequent to the decision of the Supreme Court in Begum, is the Upper Tribunal in Ciceri (President Lane giving the judgment of the tribunal). At [30], the President reformulated the legal principles as follows:-

(1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the 1981 Act exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the approach set out in paragraph 71 of the judgment in Begum, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held.

(2) If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.

(3) In so doing:

(a) the Tribunal must determine the reasonably foreseeable consequences of deprivation; but it will not be necessary or appropriate for the Tribunal (at least in the usual case) to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the United Kingdom; and

(b) any relevant assessment of proportionality is for the Tribunal to make, on the evidence before it (which may not be the same as the evidence considered by the Secretary of State).

(4) In determining proportionality, the Tribunal must pay due regard to the inherent weight that will normally lie on the Secretary of State's side of the scales in the Article 8 balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct.

(5) Any delay by the Secretary of State in making a decision under section 40(2) or (3) may be relevant to the question of whether that decision constitutes a disproportionate interference with Article 8, applying the judgment of Lord Bingham in EB (Kosovo). Any period during which the Secretary of State was adopting the (mistaken) stance that the grant of citizenship to the appellant was a nullity will, however, not normally be relevant in assessing the effects of delay by reference to the second and third of Lord Bingham's points in EB (Kosovo) (see paragraph 20 above).

(6) If deprivation would not amount to a breach of section 6 of the 1998 Act, the Tribunal may allow the appeal only if it concludes that the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted; has taken into account some irrelevant matter; has disregarded something which should have been given weight; has been guilty of some

> procedural impropriety; or has not complied with section 40(4) (which prevents the Secretary of State from making an order to deprive if she is satisfied that the order would make a person stateless).
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> (7) In reaching its conclusions under (6) above, the Tribunal must have regard to the nature of the discretionary power in section 40(2) or (3) and the Secretary of State's responsibility for deciding whether deprivation of citizenship is conducive to the public good.

31. In this case, it is clear that the FtTJ has mis-stated the law at [33] and [37] of the decision when directing himself that it is for the Tribunal to decide whether 'the discretion should be exercised differently' regardless of whether Article 8 is engaged or the case involves only the exercise of a common law discretion. As the President explains in Ciceri ([30(6)]), if deprivation of citizenship would not amount to a breach of section 6 of the 1998 Act, the Tribunal may allow the appeal only if the exercise of common law discretion by the Secretary of State was *Wednesbury* unreasonable. In this case, however, the FtTJ's error of law was not material because, as the Secretary of State accepts, the FtTJ carried out an analysis under Article 8 and found that the deprivation of citizenship did breach the appellant's rights under Article 8; as Underhill LJ observed at [32] and [46] of Laci "the essential questions may not be very different whether the issue is addressed as one of proportionality or as the exercise of a common law discretion". Accordingly (unless the judge's Article 8 analysis and conclusion was erroneous), there was no need for him to go on to consider the common law exercise of discretion and thus his misstatement of the law had no impact on the outcome of the appeal.

32. We turn to Ground 1. The Secretary of State's argument on Ground 1 rests on perversity as to the factual findings that the FtTJ took into account when assessing proportionality in this case. We remind ourselves of the high threshold that applies on perversity arguments, as recently (re)summarised by the Court of Appeal in Volpi v Volpi [2022] EWCA Civ 464, per Lewison LJ:

> "2. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:
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> i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb 'plainly' does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

> iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
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> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

33. Mr Clarke submits that it was perverse for the FtTJ to accept, as 'mitigating circumstances', the appellant's case which was to the effect that she personally was not dishonest, and thus in truth 'not guilty' of fraud, when the appellant herself had in 2011 pleaded guilty to fraud and thus had necessarily accepted that she was guilty of dishonesty. However, in our judgment there is no error in the FtTJ's approach. It is clear from [33] of the decision that the FtTJ has found the condition precedent to the exercise of the discretion under s 40(3) of the 1981 Act to be satisfied on the basis of the appellant's admission of guilt to fraud offences. He then turns to consider the Article 8 balancing exercise. In the last sentence of [34], he gives weight to the appellant's admissions of guilt when considering the weight to be given to the public interest in maintaining the British citizenship system. There can thus be no suggestion that he has forgotten or left out of account the appellant's guilty pleas in assessing the proportionality question under Article 8.

34. Further, contrary to the submission of Mr Clarke, we do not accept that it was irrational for the judge to accept her evidence as to the circumstances in which the admitted offence was committed, even though the thrust of that evidence was such that she was probably innocent of the offence for which she had, on her solicitor's advice, pleaded guilty. In this respect, we note that Mr Clarke is perhaps assuming that the FtTJ found more than he did. In fact, the FtTJ does not go so far as to say that the effect of the appellant's evidence is that she could not have been guilty of fraud. The FtTJ does not (at least, not expressly) accept the high point of the case as it was put forward on the appellant's behalf that the appellant genuinely believed when making the application that her husband was a British citizen. Rather, the tenor of the FtTJ's judgment is that he accepts that the appellant, having poor literacy skills, was 'led on' by her husband, who had not told her the full truth as to the extent of his deception until 2010. The FtTJ does not take the appellant's evidence as eliminating her guilt for the offence. Rather, he expresses it as 'limiting' the appellant's culpability. Given that he had accepted her evidence on the facts, there is nothing irrational about that conclusion, which follows from his acceptance of the appellant's uncontested evidence. While some judges might have shared the Secretary of State's circumspection about the appellant's evidence given her prior guilty plea, in particular to offences of dishonesty, on appeal, we must be satisfied that the FtTJ's conclusion was 'plainly wrong' or not one that any judge could reasonably reach. That high threshold is not met in this case.

35. We observe, further, that even if the FtTJ had found explicitly that the appellant had been wrongly advised to plead guilty because she had not actually committed fraud, we have been taken to no authority to the effect that it is never open to the Secretary of State (or the First-Tier Tribunal on appeal) to 'go behind' an admission of guilt in criminal proceedings when deciding whether the condition precedent of fraud under s 40(3) is met, or when exercising the discretion where that condition precedent is satisfied. We observe that if such a principle exists, it would be inconsistent with the exercise that the Secretary of State undertook in the decision letter in this case, where consideration was given to the appellant's evidence as to her limited culpability for the offence, albeit that the Secretary of State ultimately rejected the appellant's evidence, whereas the FtTJ accepted it. If the appellant's conviction meant that it was not open to the Secretary of State to do anything other than proceed on the basis that she was guilty of fraud, regardless of the evidence the appellant presented, we would not expect to see in the decision letter the kind of reasoning that we there find.

36. Drawing this analysis together, the FtTJ reached findings of fact, based on the appellant's unchallenged evidence, that her culpability for the immigration offences to which she pleaded guilty was at the lower end of the spectrum of severity. Those findings were findings that the judge was entitled to factor into his overall Article 8 analysis concerning the proportionality of the consequences of the deprivation of the appellant's citizenship. It is important to recall that the judge's findings on the appellant's criminal culpability formed only part of his overall Article 8 analysis. He correctly identified, at [32], that "without more", the loss of the benefits of British citizenship could not possibly tip the proportionality balance in favour of retaining the benefits of British citizenship that had been secured fraudulently, drawing on Hysaj v Secretary of State for the Home Department [2020] UKUT 128 (IAC). The "more" found by the judge included not only the findings of fact concerning the appellant's reduced culpability for her criminal conduct, but also the significant, and unexplained, delay on the part of the Secretary of State.

37. As we observed above, the decision letter provided no cogent explanation for the Secretary of State's delay. At [45] the letter said:

> "…the misrepresentation only came to the Secretary of State's attention as a result of your prosecution in 2010. The Home Office would have considered taking deprivation action earlier if it could have done so."

The above passage, written a decade after the deception came to light, is significant for what it does not say. While there can be no suggestion that the Secretary of State should have taken deprivation action prior to 2010, it offers no explanation for why it did not do so in the immediate period *after* the appellant's convictions in 2011. (The letter's reference to 2010 may have been a mistake, since the appellant's convictions were in 2011, or it could be a reference to when the Secretary of State first became aware of the criminal investigation into the appellant: nothing turns on this). The Secretary of State did, of course, take some action in the years immediately following the appellant's convictions: she reissued the appellant's British passport, in 2014. On the Secretary of State's own understanding of the chronology, the passport was reissued at a time when the Secretary of State would have been aware of the appellant's convictions for deception.

38. It is against that background that the FtTJ, correctly in our judgment on the basis of the current authorities, in particular Laci, reached the following global conclusion on proportionality at [36]:

> "Above all, however, there is the issue of the respondent's inaction and delay in seeking to deprive the appellant of her citizenship. As already noted, the appellant's criminal conviction for fraud and deception in obtaining British citizenship occurred on 26 July 2011, and the respondent first wrote to her intimating an intention to deprive her of that citizenship on 26 August 2020, over 9 years later…
>
> …the respondent's delay goes beyond mere inaction, since in 2014 she took the positive step of renew the appellant's passport, without any difficulties or objections…"

39. The FtTJ's global conclusions, at [37] (quoted above), were reached against the background of those findings. Nothing in Mr Clarke's submissions demonstrates that the judge's analysis in that respect was outside the territory of findings that he was legitimately entitled to reach. Properly understood, the Secretary of State's grounds of appeal merely disagree with the judge's operative analysis, and do not demonstrate that it involved the making of an error of law on a material matter.

Notice of decision

40. For all these reasons, there is no material error of law in the FtTJ's decision and we dismiss the appeal.

Signed H Stout
Deputy Upper Tribunal Judge Stout Dated: 14 September 2022